

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

DONALD F. BENOIT, Derivatively On
Behalf of MBNA CORPORATION,

Plaintiff,

v.

BRUCE L. HAMMONDS, et al.,

Defendants,

- and -

MBNA CORPORATION, a Maryland
corporation,

Nominal Defendant.

Civil Action No. **05-361 GMS**

MOTION TO WITHDRAW APPEARANCE OF COUNSEL

Pursuant to Local Rule 83.7 of the Rules of this Court, Joseph N. Gielata respectfully moves this Court for leave to withdraw his appearance as counsel for plaintiff.

BACKGROUND

Movant Joseph N. Gielata is serving as Delaware liaison counsel on plaintiff's behalf in this proceeding. Movant has diligently represented plaintiff since the commencement of the litigation.

REASONS FOR THE MOTION

Notwithstanding Movant's effective representation of plaintiff to date, certain events compel Movant to withdraw from the representation at this time.

Movant seeks to withdraw on the grounds that one or more of the circumstances set forth in Delaware Disciplinary Rule 1.16(b) permit withdrawal of representation by

leave of court after notice to the client under paragraph (c), of the rule. Rule 1.16 provides:

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

(1) withdrawal can be accomplished without material adverse effect on the interests of the client;

...

(5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

(7) other good cause for withdrawal exists.

The presence of one of these circumstances is sufficient grounds to permit withdrawal.

Lead counsel has been informed, in writing, of the full and complete basis on which Movant seeks withdrawal, as well as the intention of Movant to file the motion. Movant has advised plaintiff and lead counsel of the need to seek alternative liaison counsel, so that they may expeditiously proceed with the case should this court grant Movant's request for withdrawal as counsel.

This action was commenced on June 6, 2005, and no substantive or substantial discovery has been commenced. Other than an amended complaint filed on July 15, 2005, no substantive pleadings have been filed. Withdrawal by the Movant at this early stage of the litigation will not prejudice plaintiff. Since withdrawal can be affected "without material adverse effect on the interests of the client," Movant asks that the Court grant this motion to withdraw.

After withdrawal, plaintiff will remain represented by the current lead counsel. Movant believes that the plaintiff and lead counsel may quickly obtain alternative liaison counsel. If this action is consolidated with a related derivative action in this Court, the consolidated action may proceed through the liaison counsel in the related action.

Movant emphasizes that the filing of this motion has nothing to do with the legal merits of plaintiff's claims on which Movant continues to have full confidence.

CONCLUSION

Movant respectfully requests that his motion for leave to withdraw his appearance as counsel for plaintiff be granted.

DATED: August 19, 2005

Respectfully submitted,

/s/ Joseph N. Gielata
Joseph N. Gielata (DSB # 4338)
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Liaison Counsel for Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

CERTIFICATE OF SERVICE

I hereby certify that, on August 19, 2005, I electronically filed a *MOTION TO WITHDRAW APPEARANCE OF COUNSEL* with the Clerk of Court using CM/ECF which will send notification of such filing to the following:

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